

Objection Deadline: August 14, 2019 at 4:00 p.m. (Eastern Time)  
Hearing Date: Thursday, September 5, 2019 at 10:00 a.m. (Eastern Time)

JONES DAY  
Jane Rue Wittstein  
Thomas E. Lynch  
Andrew Butler  
JONES DAY  
250 Vesey St.  
New York, NY 10281-1047  
Tel: (212) 326-3939  
Fax: (212) 755-7306  
Email: jruewittstein@jonesday.com  
Email: telynych@jonesday.com  
Email: abutler@jonesday.com

*Attorneys for Reorganized Debtors*  
*NIU Holdings LLC and NII Holdings, Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In the matter of:	:	<b>Chapter 11</b>
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NIU Holdings LLC,	:	<b>Case No. 15-10155 (SCC)</b>
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Reorganized Debtor.	:	
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	:	
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NIU Holdings LLC,	:	
	:	
Plaintiff,	:	
v.	:	
	:	<b>Adv. Proc. No. 19-01099</b>
AT&T Mobility Holdings, B.V.; New Cingular	:	
Wireless Services, Inc.; Nextel International	:	
(Uruguay) LLC; and Comunicaciones Nextel	:	
de México S.A. DE C.V.,	:	
Defendants.	:	
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**NIU HOLDINGS LLC'S AND NII HOLDINGS, INC.'S LOCAL BANKRUPTCY  
RULE 7056-1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiff/Counterclaim-Defendant NIU Holdings LLC (“NIU”) and Third-Party Defendant NII Holdings, Inc. submit this statement of facts as to which there is no dispute in support of their motion for summary judgment pursuant to Bankruptcy Rule 7056 and Local Bankruptcy Rule 7056-1 for the U.S. Bankruptcy Court for the Southern District of New York. All evidence cited in this Rule 7056-1 Statement is annexed to the accompanying Declaration of Thomas E. Lynch, dated July 22, 2019.

**A. The Purchase Agreement and the Escrow Agreement**

1. NIU Holdings LLC (“NIU”), NII Holdings, Inc. (“NII”), New Cingular Wireless Services, Inc. (“New Cingular”), Nextel International (Uruguay) LLC, NIHD Telecom Holdings B.V., Comunicaciones Nextel de México S.A. de C.V., NII International Telecom S.C.A., NII International Holdings S.Á.R.L., NII Global Holdings, Inc., and NII Capital Corp. entered into a Purchase and Sale Agreement, dated January 26, 2015 (the “Purchase Agreement”). (*See* Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1).)
2. NIU, New Cingular, and Citibank, N.A. (“Citibank”) entered into an Escrow Agreement, dated January 26, 2015 (the “Escrow Agreement”) (NIU Ex. 2). (*See* Escrow Agreement, dated Jan. 26, 2015 (NIU Ex. 2).)
3. New York law governs both the Purchase Agreement and the Escrow Agreement. (*See* Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), § 12.6; Escrow Agreement, dated Jan. 26, 2015 (NIU Ex. 2), § 11(c).)
4. AT&T was not a signatory to the Purchase Agreement or the Escrow Agreement, but it is a permitted assignee of New Cingular’s rights and interests under those agreements. (*See* Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1, at 1; Letter from S. Bazan to M.E. Connolly, dated Apr. 27, 2017 (AT&T’s “April 27, 2017 Escrow Claim Notice”) (NIU Ex. 4), at 1; Letter from D. Welsch to S. Smith, dated Apr. 27, 2017 (AT&T’s “April 27, 2017 Tax Claim Notice”) (NIU Ex. 3); Defendants’ Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶ 22.)

**B. The Bankruptcy Court Approved the Purchase Agreement on March 23, 2015; NIU's Sale of Its Mexican Business Operations to New Cingular Closed on April 30, 2015 for a Final Purchase Price of \$1.875 Billion.**

5. NII Holdings and several of its affiliates filed for bankruptcy on September 15, 2014 under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (Declaration of S. Smith, dated July 22, 2019, ¶ 12.)
6. NIU filed its bankruptcy petition on January 25, 2015. (Declaration of S. Smith, dated July 22, 2019, ¶ 12.)
7. The chapter 11 cases of NIU, NII, and their then-affiliated debtors were jointly administered under NII's case number 14-12611. (Declaration of S. Smith, dated July 22, 2019, ¶ 12.)
8. The Purchase Agreement and the Escrow Agreement were both signed while NIU and NII were undergoing bankruptcy reorganizations. (Declaration of S. Smith, dated July 22, 2019, ¶ 11.)
9. The Purchase Agreement memorializes the transaction through which NIU and NII sold their telecommunications operations in Mexico to New Cingular. (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1.)
10. The sale transaction was approved by the Bankruptcy Court for the Southern District of New York on March 23, 2015 in accordance with Bankruptcy Code Sections 105 and 363. (Declaration of S. Smith, dated July 22, 2019, ¶ 16.)
11. The sale transaction closed on April 30, 2015 with a final purchase price of \$1.875 billion, minus certain adjustments. (Declaration of S. Smith, dated July 22, 2019, ¶ 17; Defendants' Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶ 5.)
12. On October 18, 2016, the Court entered a Final Decree Pursuant to Section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022 Closing the Debtors' Jointly Administered Chapter 11 Cases, ECF Document No. 988 in *In re: NII Holdings, Inc.*, Case No. 14-12611 (Bankr. S.D.N.Y.).
13. On February 11, 2019, NIU Holdings filed a motion to reopen its bankruptcy case in order to commence this adversary proceeding, and the Court entered an order on March 5, 2019

granting NIU's motion. (See Notice of Motion of NIU Holdings LLC to Reopen Its Bankruptcy Case Pursuant to Section 350(b) of the Bankruptcy Code, Rule 5010 of the Federal Rules of Bankruptcy Procedure and Local Rule 5010-1 of the Local Bankruptcy Rules, ECF Document No. 11 in *In re: NIU Holdings LLC*, Case No. 15-10155 (Bankr. S.D.N.Y.); Order Reopening the Bankruptcy Case of NIU Holdings LLC Pursuant to Section 350(b) of the Bankruptcy Code, Rule 5010 of the Federal Rules of Bankruptcy Procedure and Local Rule 5010-1 of the Local Bankruptcy Rules, ECF Document No. 15 in *In re: NIU Holdings LLC*, Case No. 15-10155 (Bankr. S.D.N.Y.).)

**C. The Purchase Agreement Sets Forth Certain NIU Indemnity Obligations and Certain NII Guarantee Obligations. The Purchase Agreement Also Established an Amount to Be Held in Escrow and Distributed in Accordance with the Escrow Agreement.**

14. In the Purchase Agreement, NIU agreed to indemnify New Cingular for certain tax obligations. (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1) § 11.)
15. Among its indemnity provisions, the Purchase Agreement provides that NIU would remain “responsible for, and will indemnify and hold harmless Purchaser . . . for all Taxes and Damages relating to . . . any taxes imposed on the Entities that are attributable to any Pre-Closing Period . . . .” (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), § 11.4(a).)
16. Among its indemnity provisions, the Purchase Agreement requires New Cingular to give notice of potential indemnification matters once “a written notice of deficiency, proposed adjustment, adjustment, assessment, audit, examination or other administrative or court proceeding, suit, dispute or other claim (a ‘Tax Claim’) is delivered or sent to or commenced or initiated” against any indemnified business entity “by any Governmental Authority with respect to Taxes or Tax Returns . . . .” (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), § 11.5(a).)
17. In the Purchase Agreement, NII agreed to guarantee certain performance by NIU. (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), § 12.13.)
18. As a Seller Guarantor, NII “irrevocably guarantee[d]” to New Cingular “the full, complete and timely payment and performance . . . by [NIU] of each and every payment and performance obligation” in the Purchase Agreement. (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), § 12.13.)

19. According to the Purchase Agreement, if NIU “defaults . . . on any such payment obligation . . . when and to the extent that any of the same will become due and payable,” then NII agreed to “unconditionally pay or cause to be paid such payment obligation . . . immediately upon notice from [New Cingular] specifying the default so that the same benefits will be conferred upon [New Cingular] as would have been received if such payment or performance obligations had been duly performed and satisfied” by NIU. (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), § 12.13.)
20. The Purchase Agreement provided that ten percent of the sale consideration would be deposited in an Escrow Account and distributed in accordance with a written Escrow Agreement. (Purchase Agreement, dated Jan. 26, 2015 (NIU Ex. 1), Recital E, § 1.1 (definitions of Escrow Agreement, Escrow Account, and Escrow Account), § 3.3.)
21. In accordance with the Purchase Agreement, \$187.5 million was deposited into the Escrow Account after the sale transaction closed on April 30, 2015. (Declaration of S. Smith, dated July 22, 2019, ¶ 21; Defendants’ Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶ 5.)
22. The Escrow Agreement sets forth the conditions under which funds in the Escrow Account are to be distributed. (Escrow Agreement (NIU Ex. 2), § 3.)
23. Under the Escrow Agreement, if NIU (as Seller) and AT&T (as Purchaser New Cingular’s assignee) agree on amounts to be disbursed from the account, they can jointly execute and deliver to the Escrow Agent a Joint Release Notice with instructions on how, when, and to whom funds should be sent. (See Escrow Agreement (NIU Ex. 2), § 3(e)(iv)).)
24. Section 3(e)(i)(2) of the Escrow Agreement provides:
- If Purchaser intends to assert a claim against the Escrow Account for Damages pursuant to Article 9 or Article 11 of the Purchase and Sale Agreement (each, a “Claim”), then Purchaser shall deliver a written notice to Escrow Agent (with a copy to Seller) (each, a “Claim Notice”) describing such claim in reasonable detail and stating a reasonable estimate of the amount of the Escrow Account to be reserved with respect to such Claim prepared in good faith based on information then available (the amount set forth in the applicable Claim Notice, the “Claimed Amount”).
- (Escrow Agreement (NIU Ex. 2), § 3(e)(i)(2).)

25. Under the Escrow Agreement, upon AT&T's delivery of a Claim Notice describing its Claim in "reasonable detail" and providing an "estimate of the amount . . . to be reserved with respect to such Claim," NIU has thirty (30) days to submit an "Objection Notice" setting forth any objection it may have to the Purchaser's Claim Notice. (Escrow Agreement (NIU Ex. 2), §§ 3(e)(i)(2), 3(e)(i)(3)).)
26. If NIU submits an Objection Notice in response to an AT&T Claim Notice, Escrow Agreement Section 3(e)(ii) applies. (See Escrow Agreement (NIU Ex. 2), § 3(e)(ii).)
27. Under the Escrow Agreement, upon receipt of an Objection Notice in response to a Claim Notice, the Escrow Agent will distribute only those amounts that are undisputed between the parties and will "continue to hold in the Escrow Account the amount in dispute (each such amount, a 'Disputed Claim Amount') . . . ." (Escrow Agreement (NIU Ex. 2), § 3(e)(ii).)
28. Upon receipt of an Objection Notice in response to a Claim Notice, the Escrow Agent is required to hold any Disputed Claim Amount in the Escrow Account until it either (1) receives from the parties a Joint Release Notice directing the disposition of "all or part of" the Disputed Claim Amount, or (2) receives from either of the parties (with notice to the other) a written notice of a legally binding settlement agreement or a final order or judgment. (Escrow Agreement (NIU Ex. 2), § 3(e)(ii).)
29. In the Escrow Agreement, the parties agreed to a "Final Release Date" after which all funds remaining in the Escrow Account were to be returned to NIU, unless (1) the funds were Disputed Claim Amounts or (2) Seller's time to submit an Objection Notice had not yet expired. (Escrow Agreement (NIU Ex. 2), § 3(e)(iii).)
30. The Final Release Date was April 30, 2017. (See Defendants' Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019 (ECF No. 14) (NIU Ex. 27), ¶ 37; see also Escrow Agreement (NIU Ex. 2), § 3(e)(iii)(1).)
31. Under the Escrow Agreement, "upon resolution of any dispute that was the subject of an Objection Notice giving rise to a Disputed Claim Amount, Seller and Purchaser shall deliver a Joint Release Notice to the Escrow Agent to release from the Escrow Account, (x) to Purchaser, the applicable amount, if any, with respect to such Disputed Claim Amount . . . and (y) to Seller, an amount equal to the excess of the entire balance then available in the

Escrow Account (if any) over the aggregate Disputed Claim Amounts still pending or disputed pursuant to Claim Notices executed and delivered by Purchaser and received by the Escrow Agent prior to 6:00 p.m. local time in New York, New York, on the Final Release Date, in each case, if any.” (Escrow Agreement (NIU Ex. 2), § 3(e)(iii)(2).)

**D. AT&T’s April 27, 2017 Tax Claim Notice and Escrow Claim Notice**

32. On April 27, 2017, AT&T delivered to NIU a Tax Claim Notice stating that certain of its affiliates were the subject of “Tax Claims concerning Taxes attributable to Pre-Closing Periods” estimated by AT&T to total an aggregate amount of \$117.9 million. (Letter from D. Welsch to S. Smith, dated Apr. 27, 2017 (AT&T’s “April 27, 2017 Tax Claim Notice” (NIU Ex. 3).)

33. In its April 27, 2017 Tax Claim Notice, AT&T set forth its “Tax Claims” as follows:

Tax Claims		
Tax Claim	Entities	Estimated Taxes and Damages
Mexican impuesto especial sobre producción y servicios (“IEPS”) audits (fiscal years 2011-2014) and related administrative appeals (fiscal years 2011-2012) and Mexican income tax/VAT audits (fiscal years 2011-2014)	Inversiones Nextel de Mexico, S. de R.L. de C.V.  NII Telecom S. de R.L. de C.V.  NII Digital S. de R.L. de C.V.	USD \$37,300,000
Mexican income tax, VAT, flat tax and IEPS audits (fiscal years 2010-2013)	Comunicaciones Nextel de Mexico S.A. de C.V.	USD \$80,600,000

(Letter from D. Welsch to S. Smith, dated Apr. 27, 2017 (NIU Ex. 3), Annex A.)

34. AT&T’s April 27, 2017 Tax Claim Notice set forth aggregate estimated Damages of \$80,600,000 related to Comunicaciones Nextel de México S.A. de C.V. (“Com Nextel”) and \$37,300,000 related to affiliates Inversiones Nextel de Mexico, S. de R.L. de C.V. (“Inv. Mexico”), NII Telecom S. de R.L. de C.V. (“NII Telecom”) and NII Digital, S. de R.L. de C.V. (“NII Digital” and, collectively with Inv. Mexico and NII Telecom, the “Other Entities”). (Letter from D. Welsch to S. Smith, dated Apr. 27, 2017 (NIU Ex. 3), Annex A.)

35. Also on April 27, 2017, AT&T delivered to Citibank (as Escrow Agent) an Escrow Claim Notice that AT&T identified as a “Claim Notice in respect of the Tax Claims detailed in the Tax Claim Notice and a Claim against the Escrow Account for Damages in accordance with Section 3(e)(i)(2) of the Escrow Agreement.” AT&T’s Escrow Claim notice attached a copy of the April 27, 2017 Tax Claim Notice addressed to NIU. (Letter from S. Bazan to M.E. Connolly, dated Apr. 27, 2017 (AT&T’s “April 27, 2017 Escrow Claim Notice”) (NIU Ex. 4), at 1 and Annex A.)
36. In its April 27, 2017 Escrow Claim Notice, AT&T requested “that the Escrow Agent reserve the Claimed Amount equal to the Tax Claim Amount” in the Escrow Account. (Letter from S. Bazan to M.E. Connolly, dated Apr. 27, 2017 (NIU Ex. 4), at 1.)
37. The \$117.9 million that AT&T sought to reserve in the Escrow Account by delivering its April 27, 2017 Escrow Claim Notice represented more than seventy percent of the \$163.46 million remaining in the Escrow Account as of the April 30, 2017 Final Release Date. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 16.)

**E. AT&T’s April 28, 2017 Communication to NIU**

38. After receiving AT&T’s April 27, 2017 notices indicating aggregate estimated Taxes and Damages of \$80,600,000 related to Com Nextel for fiscal years 2010-2013 and \$37,300,000 related to the affiliated Other Entities for fiscal years 2011-2014, NIU asked AT&T to provide more specificity. (Emails from S. Smith to D. Welsch, dated Apr. 28, 2017 at 2:34 PM and 2:42 PM (NIU Ex. 5).)
39. On April 28, 2017, AT&T provided a one-page document titled “Breakdown of Estimated Taxes and Damages in Dispute under the Audit Proceedings Referenced in Tax Claim Notice Dated April 27, 2017” showing the following details:



**AT&T Mexico / NII**  
**Breakdown of Estimated Taxes and Damages in Dispute under the Audit Proceedings**  
**Referenced in Tax Claim Notice Dated April 27, 2017<sup>1</sup>**

<b>Audit</b>	<b>Entity</b>	<b>Estimated Taxes and Damages (USD)</b>
Fiscal Year 2010 – Mexican income tax, VAT and flat tax audit	Comunicaciones Nextel de Mexico S.A. de C.V.	\$38,600,000
Fiscal Year 2011 – Mexican income tax, VAT and flat tax audit	Comunicaciones Nextel de Mexico S.A. de C.V.	\$37,100,000
Fiscal Year 2011 – Mexican impuesto especial sobre producción y servicios (“IEPS”) audit and related administrative appeal filed October 26, 2015	Inversiones Nextel de Mexico, S de R.L. de C.V.	\$9,900,000
Fiscal Year 2012 – Mexican IEPS audit and related administrative appeal filed January 28, 2016	NII Telecom S. de R.L. de C.V.	\$3,000,000
Fiscal Year 2012 – Mexican flat tax audit	Comunicaciones Nextel de Mexico S.A. de C.V.	\$3,800,000
Fiscal Year 2013 – Mexican income tax, VAT, flat tax and IEPS audit	Comunicaciones Nextel de Mexico S.A. de C.V.	\$1,100,000
Fiscal Year 2013 – Mexican income tax, VAT and IEPS audit	Inversiones Nextel de Mexico, S de R.L. de C.V.	\$12,900,000
Fiscal Year 2013 – Mexican income tax, VAT and IEPS audit	NII Digital, S de R.L. de C.V.	\$7,700,000
Fiscal Year 2014 – Mexican income tax, Vat and IEPS audit	Inversiones Nextel de Mexico, S de R.L. de C.V.	\$3,800,000

<sup>1</sup> **Note:** The above represents AT&T’s current estimate of the breakdown of the Tax Claim Amount set forth in the above-referenced notice of Tax Claim and is subject to AT&T’s ongoing review and revision based on developments in the various audit proceedings. Nothing herein is intended to or shall be deemed to limit or modify any statement or claim in the above-referenced notice of Tax Claim referenced above, and AT&T expressly reserves all of its rights, claims and arguments with respect to the Tax Claim Notice and the Taxes and Damages referenced therein.

(AT&T, “AT&T Mexico / NII, Breakdown of Estimated Taxes and Damages in Dispute under Audit Proceedings Referenced in Tax Claim Notice Dated Apr. 27, 2017,” *attached to* Email from D. Welsch to S. Smith, dated Apr. 28, 2017 5:03 PM (NIU Ex. 5).)

40. In its April 28, 2017 “Breakdown” chart, AT&T described the Claims set forth in its April 27, 2017 Escrow Claim Notice by entity and tax year. (AT&T, “AT&T Mexico / NII, Breakdown of Estimated Taxes and Damages in Dispute under Audit Proceedings Referenced in Tax Claim Notice Dated Apr. 27, 2017,” *attached to* Email from D. Welsch to S. Smith, dated Apr. 28, 2017 5:03 PM (NIU Ex. 5).)
41. The Claims against the Escrow Account AT&T identified in its April 27, 2017 Escrow Claim Notice and detailed in its April 28, 2017 “Breakdown” chart were the only Claims against the Escrow Account that AT&T identified before April 30, 2017. (Declaration of S. Smith, dated July 22, 2019, ¶ 30; Declaration of T. Mulieri,

dated July 22, 2019, ¶ 20; Defendants' Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶ 42.)

**F. The Parties' May 4, 2017 Joint Release Notice**

42. NIU and AT&T delivered to Citibank (as Escrow Agent) a Joint Release Notice dated May 4, 2017 instructing Citibank to release to NIU \$45,562,279.58 from the Escrow Account. (Joint Release Notice from New Cingular and NIU to Citibank, dated May 4, 2017 (the "May 4, 2017 Joint Release Notice") (NIU Ex. 7).)
43. In their May 4, 2017 Joint Release Notice, NIU and AT&T agreed that the \$45.6 million to be released to NIU was the difference between (i) the total balance of the funds in the Escrow Account and (ii) the sum of "(A) the aggregate Claimed Amount in respect of all pending or disputed [sic] Disputed Claim Amounts and (B) the aggregate Claimed Amount in respect of Claims for which the Objection Period has not yet expired, in each case pursuant to Claim Notices received by the Escrow Agent prior to the Final Release Date . . . ." (Joint Release Notice from New Cingular and NIU to Citibank, dated May 4, 2017 (NIU Ex. 7), at 1.)

**G. AT&T's May 9, 2017 and May 12, 2017 Spreadsheets with Additional Detail Concerning Its Tax Claims**

44. On May 9, 2017 and in response to requests from NIU for more detail, David Welsch at AT&T sent an Excel spreadsheet file—titled "Copy of Contingencies 2010 – Apr 2015 NII 050817 notes.xlsx"—that he described as having "additional detail on the tax claims" AT&T had identified in its April 27, 2017 Escrow Claim Notice. (Email from D. Welsch to S. Smith et al., dated May 9, 2017 10:43 AM (NIU Ex. 8).)
45. The Excel spreadsheet file that AT&T provided on May 9, 2017 contained details and calculations regarding the separate tax entities and tax years that were the subject of ongoing tax audits in Mexico. (Email from D. Welsch to S. Smith et al., dated May 9, 2017 10:43 AM (NIU Ex. 8), referring to Excel spreadsheet file titled "Copy of Contingencies 2010 – Apr 2015 NII 050817 notes.xlsx."); (Declaration of T. Mulieri, dated July 22, 2019, ¶ 24).
46. Within the "Copy of Contingencies 2010 – Apr 2015 NII 050817 notes.xlsx" file, the "FISCAL YEARS 2010 – APR 2015 SUMMARY CONTINGENCY BY LEGAL ENTITY US DOLLAR" worksheet summarized underlying calculations with sums that closely

corresponded with the entity and tax year information AT&T provided in its April 28, 2017 chart titled “Breakdown of Estimated Taxes and Damages in Dispute under the Audit Proceedings Referenced in Tax Claim Notice Dated April 27, 2017.” (*Compare* Excel spreadsheet file titled “Copy of Contingencies 2010 – Apr 2015 NII 050817 notes.xlsx,” at Worksheet Titled “Summary Contingency USD” *attached to* Email from D. Welsch to S. Smith et al., dated May 9, 2017 10:43 AM (NIU Ex. 8) *with* AT&T, “AT&T Mexico / NII, Breakdown of Estimated Taxes and Damages in Dispute under Audit Proceedings Referenced in Tax Claim Notice Dated Apr. 27, 2017,” *attached to* Email from D. Welsch to S. Smith, dated Apr. 28, 2017 5:03 PM (NIU Ex. 5).)

47. After reviewing the information AT&T provided on May 9, 2017, NIU requested that AT&T reconsider certain interest calculations that appeared to account incorrectly for a statutory interest cap. AT&T’s apparent error resulted in a multi-million dollar overstatement of the aggregate potential indemnity claims. (Email from S. Smith to D. Welsch, dated May 10, 2017, 9:48 AM (NIU Ex. 9), at Numbered Point 2.)
48. In response to NIU’s inquiry about its interest calculations, AT&T agreed that its calculations were incorrect. In a May 12, 2017 email, David Welsch affirmed that AT&T had “updated the interest calculations” in an “attached spreadsheet” and would “revise the indemnity claim amounts accordingly.” (Email from D. Welsch to S. Smith, dated May 12, 2017, 5:02 PM (NIU Ex. 10), Interlineated at Numbered Point 2 in reply to the May 10, 2017 email from S. Smith to D. Welsch.)
49. The Excel file AT&T attached to its May 12, 2017 email, titled “Contingencies 2010 – Apr 2015 NII 051117.xlsx,” contained details and calculations in the same format and with results similar to the Excel file AT&T provided on May 9, 2017. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 29). The May 12, 2017 version, however, revised AT&T’s calculations to account for the previously incorrect interest calculations. (Excel spreadsheet file titled “Contingencies 2010 – Apr 2015 NII 051117.xlsx,” at Worksheet Titled “Summary Contingency USD,” *attached to* Email from D. Welsch to S. Smith et al., dated May 12, 2017 5:02 PM (NIU Ex. 10); Declaration of T. Mulieri, dated July 22, 2019, ¶ 29).)
50. Within the “Contingencies 2010 – Apr 2015 NII 051117.xlsx” Excel file that AT&T sent on May 12, 2017, the “FISCAL YEARS 2010 – APR 2015 SUMMARY CONTINGENCY

BY LEGAL ENTITY US DOLLAR” worksheet summarized underlying calculations with sums that revised the entity and tax year information AT&T previously set forth in the May 9, 2017 version of its calculations. (*Compare* Excel spreadsheet file titled “Contingencies 2010 – Apr 2015 NII 051117.xlsx,” at Worksheet Titled “Summary Contingency USD,” *attached to* Email from D. Welsch to S. Smith et al., dated May 12, 2017 5:02 PM (NIU Ex. 10) *with* Excel spreadsheet file titled “Copy of Contingencies 2010 – Apr 2015 NII 050817 notes.xlsx,” at Worksheet Titled “Summary Contingency USD,” *attached to* Email from D. Welsch to S. Smith et al., dated May 9, 2017 10:43 AM (NIU Ex. 8).)

51. In his May 12, 2017 email to NIU, David Welsch also wrote that “Once the 2010 [Com Nextel] audit is finally settled, AT&T is willing to release to NII of the corresponding portion of the claimed amount. Assuming the final settlement is as expected, we would release an additional \$35.5M from the escrow. AT&T’s willingness to do so is without prejudice to its rights, claims and arguments with respect to the claimed amount in the claim notice.” (Email from D. Welsch to S. Smith, dated May 12, 2017 (NIU Ex. 10).)

**H. AT&T’s May 18, 2017 Agreement to Release to NIU the Escrow Funds That Exceeded Its Lowered Aggregate Claims**

52. NIU and AT&T executed and delivered to Citibank (as Escrow Agent) a Joint Release Notice dated May 18, 2017 instructing Citibank to release to NIU \$4,100,000 from the Escrow Account. (Joint Release Notice from New Cingular and NIU to Citibank, dated May 18, 2017 (the “May 18, 2017 Joint Release Notice”) (NIU Ex. 11); Letter from A. Keisel to M.E. Connolly, dated May 18, 2019 (NIU Ex. 12) (attaching the May 18, 2017 Joint Release Notice as Annex A).)
53. In its May 18, 2017 letter to Citibank, AT&T acknowledged that the \$4.1 million that the parties agreed in the May 18, 2017 Joint Release Notice should be released to NIU was the difference between its April 27, 2017 estimate of aggregate Taxes and Damages and the corrected amount of its aggregate claimed amount after recalculating interest amounts that comprised its earlier aggregate claimed amount. Specifically, AT&T wrote that its “revised estimate, as of the date hereof and subject to further revision in the event additional information becomes available, of the aggregate amount of Taxes and Damages indemnifiable in respect of the Specified Tax Claims is equal to US\$113,800,000.00 (the

“Revised Claimed Amount”).” (Letter from A. Keisel to M.E. Connolly, dated May 18, 2019 (NIU Ex. 12), at 1.)

54. The \$4.1 million that the parties agreed in the May 18, 2017 Joint Release Notice should be released to NIU was approximately equal to the difference between the amount AT&T had previously claimed for the Com Nextel 2010 tax audit, the Com Nextel 2011 tax audit, and the Inv. Mexico 2011 tax audit and the updated claimed amount for each of these audits after the recalculation of interest. The difference between the aggregate amount that AT&T claimed for those three audits as of April 28, 2017 (\$85,600,000) and its revised calculations for those three audits as of May 12, 2017 (\$81,480,742, after AT&T revised its estimates of interest payments) is \$4,119,258. \$4,100,000 is that amount, rounded to the nearest hundred thousand dollar figure. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 34.)
55. The \$113,800,000 that AT&T identified as its Revised Claimed Amount on May 18, 2017 was also equal to the \$113,758.362 total of all audits identified in AT&T’s “FISCAL YEARS 2010 – APR 2015 SUMMARY CONTINGENCY BY LEGAL ENTITY US DOLLAR” worksheet in the “Contingencies 2010 – Apr 2015 NII 051117.xlsx” file it sent on May 12, 2017, rounded to the nearest hundred thousand dollar figure:

<b>AUDIT AND ENTITY</b>	<b>Amount in AT&amp;T’s May 12, 2017 “FISCAL YEARS 2010 – APR 2015 SUMMARY CONTINGENCY BY LEGAL ENTITY US DOLLAR” Worksheet</b>
Fiscal Year 2010 – Mexican income tax, VAT and flat tax audit of Comunicaciones Nextel de México S.A. de C.V.	\$35,462,965
Fiscal Year 2011 – Mexican income tax, VAT and flat tax audit of Comunicaciones Nextel de México S.A. de C.V.	\$36,857,706
Fiscal Year 2011 – Mexican impuesto especial sobre producción y servicios (“IEPS”) audit and related administrative appeal filed October 26, 2015 for Inversiones Nextel de Mexico, S. de R.L. de C.V.	\$9,160,071
Fiscal Year 2012 – Mexican IEPS audit and related administrative appeal filed January 28, 2016 for NII Telecom S. de R.L. de C.V.	\$3,005,111
Fiscal Year 2012 – Mexican flat tax audit of Comunicaciones Nextel de México S.A. de C.V.	\$3,816,390
Fiscal Year 2013 – Mexican income tax, VAT, flat tax and IEPS audit of Comunicaciones Nextel de México S.A. de C.V.	\$1,053,193

Fiscal Year 2013 – Mexican income tax, VAT and IEPS audit of Inversiones Nextel de Mexico, S. de R.L. de C.V.	\$12,859,836
Fiscal Year 2013 – Mexican income tax, VAT and IEPS audit of NII Digital, S. de R.L. de C.V.	\$5,005,372 + \$2,701,498
Fiscal Year 2014 – Mexican income tax, VAT and IEPS audit of Inversiones Nextel de Mexico, S. de R.L. de C.V.	\$3,836,219
<b>Total:</b>	<b>\$113,758.362</b>

(Excel spreadsheet file titled “Contingencies 2010 – Apr 2015 NII 051117.xlsx,” at Worksheet Titled “Summary Contingency USD,” *attached to* Email from D. Welsch to S. Smith et al., dated May 12, 2017 5:02 PM (NIU Ex. 10); Declaration of T. Mulieri, dated July 22, 2019, ¶ 34.)

**I. NIU’s May 25, 2017 Objection to AT&T’s Escrow Claim Notice**

56. On May 25, 2017, NIU executed and delivered to Citibank (as Escrow Agent), an Objection Notice in response to AT&T’s April 27, 2017 Escrow Claim Notice. (Letter from S. Smith to M.E. Connolly, dated May 25, 2017 (NIU’s “May 25, 2017 Objection to Escrow Claim Notice”) (NIU Ex. 14) (attaching as Annex I the Letter from S. Smith to J. O’Connor and D. Welsch, dated May 25, 2017).)
57. In its May 25, 2017 Objection to Escrow Claim Notice, NIU provided notice of its objection to AT&T’s April 27, 2017 Escrow Claim Notice and, in accordance with Section 3(e)(ii) of the Escrow Agreement, directed that Citibank should release no portion of the Claimed Amount to AT&T. (Letter from S. Smith to M.E. Connolly, dated May 25, 2017 (NIU Ex. 14), at 1.)

**J. On July 18, 2017, AT&T Agreed to Release \$3.8 Million More from the Escrow Account to NIU**

58. Among its May 25, 2017 objections to AT&T’s Escrow Claim Notice, NIU stated that AT&T’s Claimed Amounts included an assumed amount of \$3,816,390 for the 2012 tax year that was not based on any “‘written notice of deficiency, proposed adjustment, adjustment, assessment, audit, examination or other administrative or court proceeding, suit, dispute or other claim’ by a Governmental Authority, as required by Section 11.5(a) of the Purchase Agreement, and are therefore not valid claims for indemnification.” (Letter from S. Smith to J. O’Connor and D. Welsch, dated May 25, 2017 (NIU Ex. 13), *attached to* Letter from S. Smith to M.E. Connolly, dated May 25, 2017 (NIU Ex. 14), Annex I.)

59. NIU and AT&T executed and delivered to Citibank (as Escrow Agent) a Joint Release Notice dated July 18, 2017 instructing Citibank to release to NIU \$3,816,390 from the Escrow Account. (Joint Release Notice from New Cingular and NIU to Citibank, dated July 18, 2017 (the “July 18, 2017 Joint Release Notice”) (NIU Ex. 15).)
60. The parties’ July 18, 2017 Joint Release Notice included an agreement that AT&T would be permitted to “adjust the Claimed Amount set forth in the Tax Claim Notice to include any Taxes and Damages attributable or otherwise related to the 2012 fiscal year” in an amount not to exceed \$3,816,390. (Joint Release Notice from New Cingular and NIU to Citibank, dated July 18, 2017 (the “July 18, 2017 Joint Release Notice”) (NIU Ex. 15).) The \$2,693,806 amount determined to be owed for Com Nextel’s fiscal year 2012 was paid out of the Escrow Account pursuant to a Joint Release Notice executed by the parties in June 2019. (Joint Release Notice from New Cingular and NIU to Citibank, dated June 24, 2019 (the “June 24, 2019 Joint Release Notice”) (NIU Ex. 23).)

**K. The Status of AT&T’s Claims as of July 2017**

61. As of July 2017, AT&T’s aggregate claims against the Escrow Account totaled \$109,941,971. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 40.)
62. That \$109,941,971 total, which included corrections AT&T made between April and July 2017 described above, is set forth in the following table with references to the relevant tax years and entities:

Audit	Entity	Estimated Taxes and Damages (USD)	Adjustments	Updated Amount
Fiscal Year 2010 – Mexican income tax, VAT and flat tax audit	Comunicaciones Nextel de Mexico S.A. de C.V.	38,600,000	(3,137,035)	35,462,965
Fiscal Year 2011 – Mexican income tax, VAT and flat tax audit	Comunicaciones Nextel de Mexico S.A. de C.V.	37,100,000	(242,294)	36,857,706
Fiscal Year 2012 – Mexican flat tax audit	Comunicaciones Nextel de Mexico S.A. de C.V.	3,800,000	(3,800,000)	-
Fiscal Year 2013 – Mexican income tax, VAT, flat tax and IEPS audit	Comunicaciones Nextel de Mexico S.A. de C.V.	1,100,000	(46,807)	1,053,193
Total Comunicaciones Nextel		80,600,000	(7,226,136)	73,373,864
Fiscal Year 2011 – Mexican impuesto especial sobre producción y servicios (“IEPS”) audit and related administrative appeal filed October 26, 2015	Inversiones Nextel de Mexico, S de R.L. de C.V.	9,900,000	(739,929)	9,160,071
Fiscal Year 2012 – Mexican IEPS audit and related administrative appeal filed January 28, 2016	NII Telecom S. de R.L. de C.V.	3,000,000	5,111	3,005,111
Fiscal Year 2013 – Mexican income tax, VAT and IEPS audit	Inversiones Nextel de Mexico, S de R.L. de C.V.	12,900,000	(40,164)	12,859,836
Fiscal Year 2013 – Mexican income tax, VAT and IEPS audit	NII Digital, S de R.L. de C.V.	7,700,000	6,870	7,706,870
Fiscal Year 2014 – Mexican income tax, Vat and IEPS audit	Inversiones Nextel de Mexico, S de R.L. de C.V.	3,800,000	36,219	3,836,219
Total Other Entities		37,300,000	(731,893)	36,568,107
Total Claims		117,900,000		109,941,971

Declaration of T. Mulieri, dated July 22, 2019, ¶ 40).

63. Of the \$109,941,971 total of AT&T’s aggregate claims as of July 2017, \$73,373,864 related to Com Nextel and \$36,568,107 in claims related to the affiliated Other Entities. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 41).

64. Of the \$73,373,864 related to Com Nextel as of July 2017, \$35,462,965 was for the 2010 tax audit and \$36,857,706 was for the 2011 tax audit. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 42).

**L Since July 2017, the Com Nextel 2010 and 2011 Tax Audits That Comprised \$38,600,000 and \$37,100,000, Respectively, of AT&T’s Original Claims (and \$35,462,965 and \$36,857,706, Respectively, of AT&T’s Revised Claims) Have Been Resolved**

65. AT&T’s April 28, 2017 “Breakdown” attributed \$38,600,000 of the Claims it asserted against the Escrow Account to Com Nextel’s 2010 tax audit and \$37,100,000 to Com Nextel’s 2011 tax audit. (AT&T, “AT&T Mexico / NII, Breakdown of Estimated Taxes and Damages in Dispute under Audit Proceedings Referenced in Tax Claim Notice Dated Apr. 27, 2017,” *attached to* Email from D. Welsch to S. Smith, dated Apr. 28, 2017 5:03 PM (NIU Ex. 5).)



66. Com Nextel's 2010 tax audit has been resolved, and AT&T satisfied 100% of its obligations with respect to Com Nextel's 2010 tax audit without any outlay of cash. No escrow funds were disbursed to AT&T in connection with the completion of the Com Nextel 2010 tax audit. (Declaration of S. Smith, dated July 22, 2019, ¶ 40; Declaration of T. Mulieri, dated July 22, 2019, ¶ 44; Defendants' Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶¶ 16, 54.)
67. Resolution of the Com Nextel 2010 tax audit with no outlay of cash means that AT&T reserved \$35,462,965 more in the Escrow Account for that tax audit than was needed for that audit to be resolved. (Email from S. Smith to D. Welsch, dated July 18, 2018, 3:46 PM (attaching presentation and proposed joint release notice) (NIU Ex. 21); Declaration of T. Mulieri, dated July 22, 2019, ¶ 42, 44).)
68. The Com Nextel 2010 tax audit was conclusively resolved (including the filing of amended returns and confirmation from all relevant governmental authorities that the audit was finalized and closed) by October 24, 2018. (Declaration of S. Smith, dated July 22, 2019, ¶ 41).)
69. Com Nextel's 2011 tax audit has also been resolved. (Defendants' Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶¶ 16, 54.)
70. In connection with Com Nextel's 2011 tax audit, NIU and AT&T entered into a letter agreement dated July 9, 2018 memorializing NIU's consent to AT&T's settlement of Com Nextel's 2011 income tax audit in the amount of \$3,994,720.20. (Letter Agreement between AT&T and NIU, dated July 9, 2018 (NIU Ex. 20); Defendants' Amended Answer, Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶¶ 16, 54.)
71. In connection with the July 2018 letter agreement between the parties, NIU and AT&T executed and delivered to Citibank (as Escrow Agent) a Joint Release Notice dated July 9, 2018 instructing Citibank to release to AT&T \$3,994,720.20 from the Escrow Account. (Joint Release Notice from New Cingular and NIU to Citibank, dated July 9, 2018 (the "July 9, 2018 Joint Release Notice") (NIU Ex. 19); Defendants' Amended Answer,

Affirmative Defenses, and Counterclaims, dated June 10, 2019, (ECF No. 14) (NIU Ex. 27), ¶ 16.)

72. Subtracting the \$3,994,720.20 (the amount disbursed from the Escrow Account pursuant to the parties' July 9, 2018 Joint Release Notice) from the previous \$109,941,971 aggregate total of AT&T's claims reduced the aggregate total of claims from \$109,941,971 to \$105,947,250.80. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 47).
  73. Out of the \$105,947,251 aggregate total of AT&T's claims against the Escrow Account after the July 9, 2018 Joint Release Notice, \$68,325,951 is the amount that AT&T claimed for the 2010 and 2011 Com Nextel tax audits but that was not needed when those audits were resolved. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 47) The remaining \$37,621,300 is comprised of the \$1,053,193 AT&T estimated for the Com Nextel 2013 audit and the \$36,568,107 AT&T estimated for the tax years related to the affiliated Other Entities. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 47)
  74. The Com Nextel 2011 tax audit was conclusively final (including the filing of amended returns and confirmation from all relevant governmental authorities that the audit was finalized and closed) by April 2, 2019. (Declaration of S. Smith, dated July 22, 2019, ¶ 44.)
- M. Since the Resolution of the 2010 and 2011 Com Nextel Tax Audits, AT&T Has Refused to Execute a Joint Release to Disburse to NIU Excess Amounts That AT&T Had Reserved for Those Matters.**
75. In 2018, NIU requested that AT&T plan to execute a joint release notice in connection with the anticipated resolution of Com Nextel tax audits for 2010 and 2011 that had been part of AT&T's April 27, 2017 Escrow Claim Notice. (Declaration of S. Smith, dated July 22, 2019, ¶ 45.)
  76. AT&T refused to execute a joint release notice upon resolution of Com Nextel tax audits for 2010 and 2011. (Letter from D. Welsch to S. Smith, dated April 5, 2018 (NIU Ex. 17); Letter from J. Kane to D. Welsch, dated Apr. 24, 2018 (NIU Ex. 18); Email from S. Smith to D. Welsch, dated July 18, 2018, 3:46 PM (NIU Ex. 21) (attaching presentation and proposed joint release notice); Letter from W. Ahlers to J. Kane, dated Aug. 3, 2018 (NIU Ex. 22); Declaration of S. Smith, dated July 22, 2019, ¶ 46, 47.)

77. Despite NIU's demands, AT&T has refused to release to NIU the excess funds in the Escrow Account that AT&T claimed based upon the Com Nextel 2010 and 2011 tax audits that were not needed to resolve those audits. (Declaration of S. Smith, dated July 22, 2019, ¶ 48.)
78. In its August 2018 confirmation that it would not execute joint release notices in connection with the resolution of Com Nextel tax audits for 2010 and 2011, AT&T's representative argued that AT&T's April 2017 Tax Claim Notice created a single "Claim" giving rise to a single "Disputed Claim Amount" and that all components of its Escrow Claim Notice need to be finally resolved before any one is considered final. (See Letter from W. Ahlers to J. Kane, dated Aug. 3, 2018, at 2-3 (NIU Ex.22).)

**N. Resolution of the Com Nextel 2012 Tax Audit**

79. In connection with Com Nextel's 2012 tax audit, NIU and AT&T entered into a letter agreement dated June 25, 2019 memorializing NIU's consent to AT&T's settlement of Com Nextel's 2012 income tax audit in the amount of \$2,693,806 and the use of Escrow Funds to pay that amount consistent with the July 18, 2017 letter agreement between the parties. (Letter Agreement between AT&T and NIU, dated June 24, 2019 (NIU Ex. 24); Joint Release Notice from New Cingular and NIU to Citibank, dated June 24, 2019 (the "June 24, 2019 Joint Release Notice") (NIU Ex. 23).)

**O. The Balance of the Escrow Agreement**

80. As of June 28, 2019, the balance of the Escrow Account is \$103,421,588.85. (Declaration of T. Mulieri, dated July 22, 2019, ¶ 50.)

**P. NIU's and NII's Performance of Their Obligations Under the Purchase Agreement**

81. NIU has honored its indemnification and payment obligations to AT&T under the Purchase Agreement. (Declaration of S. Smith, dated July 22, 2019, ¶ 50.)
82. AT&T has never claimed that NIU failed to meet any indemnification obligation under the Purchase Agreement. (Declaration of S. Smith, dated July 22, 2019, ¶ 51.)
83. AT&T has never claimed that NIU failed to meet any payment obligation under the Purchase Agreement. (Declaration of S. Smith, dated July 22, 2019, ¶ 51.)

84. AT&T has never demanded that NII perform guarantee obligations under the Purchase Agreement. (Declaration of S. Smith, dated July 22, 2019, ¶ 52.)

Dated: July 22, 2019  
New York, New York

Respectfully submitted,

/s/ Thomas E. Lynch  
Jane Rue Wittstein  
Thomas E. Lynch  
Andrew Butler  
JONES DAY  
250 Vesey St.  
New York, NY 10281-1047  
Tel: (212) 326-3939  
Fax: (212) 755-7306  
Email: jruewittstein@jonesday.com  
Email: telynch@jonesday.com  
Email: abutler@jonesday.com

*Attorneys for Reorganized Debtors  
NIU Holdings LLC and NII Holdings, Inc.*